

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

M.D., b/n/f Sarah R. Stukenberg, et al., §
§
Plaintiffs, §
v. §
§
GREG ABBOTT, in his official capacity as §
Governor of the State of Texas, et al., §
§
Defendants. §

Civil Action No. 2:11-CV-00084

**PLAINTIFFS' NOTICE REGARDING STATE'S
WAIVER OF CHALLENGE TO TERMINATION PROVISIONS**

Plaintiffs' respectfully note that the Fifth Circuit held that the State waived any challenge to the termination provisions in the 2018 permanent injunction Order. *See* Dkt. 606 at 19-20.

Having not challenged the termination provisions in its first appeal from the final judgment, the State tried to challenge them in its supplemental appeal from the injunction Order. The Fifth Circuit rejected that belated challenge, holding that the State waived it by failing to appeal the same provisions in the earlier January 19, 2018 final judgment:

Finally, the State objects to the modified injunction's termination provisions. These same provisions were in the original injunction, yet we heard nothing from the State about them in the original appeal. The State cannot now challenge these provisions. It is too late for that. The State's arguments are waived. *See Med. Ctr. Pharmacy v Holder*, 634 F.3d 830, 834 (5th Cir. 2011) ("The waiver doctrine bars consideration of an issue that a party could have raised in an earlier appeal in the case." (quotation omitted)).

M. D. by next friend Stukenberg v. Abbott, 929 F.3d 272, 281 (5th Cir. 2019) (*Stukenberg II*)

As such, the termination provisions stand confirmed. And they require "full compliance." Dkt. 606 at 19. Specifically, they require "full compliance with" any particular component of the Order before supervision over that component may be terminated, and, before the clock starts on

the three-year period during which the Court will retain jurisdiction, the State must be in “full compliance as certified by the Monitors,” with the entire Order. *Id.*

Dated: December 5, 2023

Respectfully submitted,

Samantha Bartosz (*pro hac vice*)
Stephen Dixon (*pro hac vice*)
CHILDREN’S RIGHTS
88 Pine Street
New York, New York 10005
(212) 683-2210
sbartosz@childrensrights.org

Marcia Robinson Lowry (*pro hac vice*)
A BETTER CHILDHOOD, INC.
355 Lexington Avenue, Floor 16
New York, New York 10017
(646)795-4456
mlowry@ABetterChildhood.org

/s/ R. Paul Yetter
R. Paul Yetter
State Bar No. 22154200
Christian J. Ward
State Bar No. 24033434
Karla Rosali Maradiaga
State Bar No. 24126746
YETTER COLEMAN LLP
811 Main Street, Suite 4100
Houston, Texas 77002
(713) 632-8000
pyetter@yettercoleman.com

Barry F. McNeil
State Bar No. 13829500
HAYNES AND BOONE, LLP
2323 Victory Ave., Suite 700
Dallas, Texas 75219
(214) 651-5000
barry.mcneil@haynesboone.com

ATTORNEYS FOR PLAINTIFFS AND THE GENERAL CLASS AND SUBCLASSES

CERTIFICATE OF SERVICE

I certify that on the 5th day of November, 2023, a true and correct copy of this document was served on all counsel of record via email or by using the Court’s CM/ECF e-file system.

/s/ R. Paul Yetter
R. Paul Yetter